88-1508

Supreme Court, U.S.
FILED
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JOSEPH F. SPANIOL, JR.
CLERK

No.....

In The

Supreme Court of the United States

October Term, 1988

Ralph G. Patton, Pro Se,

Petitioner

v.

The United States Railroad Retirement Board,

Respondent

Petition for a Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit.

Ralph G. Patton, Pro Se
POST OFFICE BOX 147,
Morganton, N.C.28655
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EDITOR'S NOTE

THE FOLLOWING PAGES WERE POOR HARD COPY AT THE TIME OF FILMING. IF AND WHEN A BETTER COPY CAN BE OBTAINED, A NEW FICHE WILL BE ISSUED.

Questions Presented:

Does the Railroad Retirement Act of 1974 (45 U.S.C § 231 et seq.) violate the federal constitutional guarantee of equal protection of the law pertaining to Ralph G. Patton who was awarded $30.82 Tier II for over 25 years maximum bases paid in 84.44% of 30 years, while awarding a 30 year "career" rail worker about $600.00 or 20 times as much with only 15.56% more years of service? Year in 2nd question 1983.

Is there a second violation when the "act" provides the career worker to use 20 years of rail employment counted as social security to realize the 29 highest years for his tier I award (largest element in retirement) while denying Patton 4 years & 9 months of "worked" Social Security years counted towards tier II, 2nd element in the awards?

Is there a 3rd violation when the "act" al-

lows a 30 year "career" worker to retire at age 60 with no 20% age reduction while requiring me to retire 2 years later loss 20% for early retirement? In replying, consider that he is paid $30,000.00 in that 2 year head start and about $200.00 more per month for life, with only 1/6th more railroad employment, while I have twice as much Social Security (20 Years v. 9 years) that funds at least 95% of all 3 elements of rail retirement. Conditions existing in 1983

Does the Patton award of $30.82 for tier II and $183.64 Tier I violate the stated intent of the 1974 Act which provided only for the elimination of Windfall for dual workers with less than 25 years service, while Patton's over 25 years maximum pay in has 5 sets of minus factors not applied to the career worker, so that for all practical purposes, the tier elements are impermissably low or about eliminated?

Questions Continued

Since Supreme Court Case #79-970 Fritz v. The U. S. Railroad Ret. Bd. decided Dec. 9, 1980 upheld depriving dual workers in the Fritz class of a median $88.00 less who had less than 25 years railroad service, same being the intent of the 1974 Railroad Solvency Act, how will it view cleverly contrived formulas by over zealous Government Accountants who reduced Patton's Tier II to less than half of the $88.00 median "windfall", in spite of <u>over 25 years</u> maximum paid bases, when the "Act" did not require, or even allow drastic cuts in the Tier components of Railroad Retirement??? When considering above question, may I remind the Court of their language in the Fritz class in which they described the Windfall deprivation as "unwise legislation unartfully drawn, resulting in some inequality, lacking in mathematical nicety and unscientific", apparently distasteful to all.

Questions Continued

Does the equal protection component of the 5th Admendment bar congress from allocating pension benefits that result in losses of 6 times as high as the Fritz loss of $88.00 & the "Notch Baby" loss of a median $100.00 both of which may be the only precedences available to the Supreme Court? ($600.00 Loss)

Since retirement awards are "Entitlements" & included in the Federal Budget, onjoying an "Exempt" status provided by statutes, are cleverly contrived formulas that reduce my Tier II 67% violating both the entitlement & exempt status of earned award money held in Government Trust Accounts?

Since the legislative classification written to deprive Dual Workers of windfallceased to bear a rational relationship to the need to save money by deprivation in that the railroad workers were included in the Social Security Trust Fundcover funded in the early

eighties & reaching a forty six billion dollar surplus in 1987, was I not impermissably treated fully warranting Judicial Revue of that unfair procedure?

With about 400,000 workers & 1,000,000 Retirees, considering a near bankrupt base in 1974, the railroad trust fund by a lop-sided financial interchange with the Social Security Trust Fund, General Treasury appropriations & interfund borrowing finds itself not only "Federally financially assisted", but in fact Federally maintained, clearly public Funds; wouldn't awards varying up to $600.00 be unlawful from such funds? Is equal treatment provided by the Constitution turned on its head?

Since I (Patton) am challenging economic legislation enacted by congress on equal protection grounds as being violative of the Fifth Admendment involving hundreds of

dollars lost monthly in Tiers I & II not an intent of the 1974 "Act", too severe to be justified under complexities Congress faced in Social Legislation; will the Court by judicial decree certify my entire work history as Rail Employment as of year of litigation, 1983? By Statute, the 1974 Railroad Solvency act initially allowed the Rail Worker to use his entire work history (then 29 Years); in 1983, year under litigation, he uses 20 years conversion towards Social Security Tier I, largest element in the 3 layer award. I have worked out over 20 years---the Rail worker only 9 years. Does the court not agree that equal treatment of the two work histories is very much in order to correct the Tier II pittance of $30.82 due for my maximum paid for over 25 years of earned entitlement?
Is rail employment superior to social security and serving a special Government purpose?

TABLE OF AUTHORITIES AND FINDINGS
DIRECTLY ASSOCIATED WITH THESE CASES

CASES

Morey v. Doud, 354 U.S. 457,472 (1957) with Frankfurter, J, dissenting

How does the Court perceive the equal protection component of the Fifth Admendment? They have agreed that the "rational basis is the standard and purports to apply said standard, but the scrutiny applied to the petitioner's challenged classification thus far have immunized the Railroad Retirement Act from judicial revue. The principal purpose of the Act of 1974 was to eliminate windfall for those with less than 25 Years, not to reduce Tiers I & II (Railroad) to meaningless amounts. This gross reductions suffered by Patton was not a goal of the 1974 Act

Cf. Nachman Corp v. Pension Benefit Guaranty Corp. - U.S. (1980), 48 U.S.L.W. 4524, 4528

-Employment Retirement Income Security Act "to prevent the 'great personal tragedy' suffered by those employees (like Patton) whose vested benefits are not properly paid.

TABLE OF AUTHORITIES AND FINDINGS DIRECTLY ASSOCIATED WITH THESE CASES.

H.R. Rep. No. 1345, 93rd Cong, 2d Sess 1, 2 (1974); S. Rep. No 1163, 93d Cong 2d Sess., 1, 2 (1974).

"Persons who already have vested rights under both the Railroad Retirement and Social Security Systems will in the future be permitted to receive benefits computed under both systems just as is true under existing law."

James v. Strange, 407 U. S. 128 (1972)

"When faced with a challenge to a legislative classification under the rational basis test, the court should ask first what the purposes of the statute are, and second whether the classification is rationally related to achievement of those purposes. This petitioner than adds that he hopes the Court will not defer to the Congress, but will come forth with a judicial review that certifies him for those statutes in which the awards are realistic and not pittances or unreasonably low.

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NO..... ...

IN THE SUPREME COURT OF THE UNITED STATES

RALPH G. PATTON, PRO SE
POST OFFICE BOX 147
MORGANTON, N. C. 28655

PETITIONER

v.

THE UNITED STATES RAILROAD RETIREMENT BD.
844 RUSH STREET
CHICAGO, ILLINOIS 60611

RESPONDENT

PETITION FOR A WRIT OF CERTIORI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

The Petitioner, Ralph G. Patton on behalf of myself and no others similarly situated, hereby petition the Opinion of the United States Court of Appeals for the 4th Circuit entered in this case on October 31, 1988.

Opinions Below

The Memorandum Opinion Orders of the United States District Court for the Western District of North Carolina signed by District Judge Woodrow W. Jones has six or more false statements in it, several misleading statements and is highly damaging to my case. The facts are that I was not allowed to make one single statement on my behalf, Judge Jones dismissed the case for lack of jurisdiction in a stern voice. I then said "Your Honor, could I.." The Judge leaned froward from the bench and in a manner that appeared angry stated.."I told you your case belongs in the Richmond Va 4th Circuit Court of Appeals." "I have never tried a Railroad Case in my 20 years on the bench." The Civil Cover Sheet I had filed under cause of action pleaded violation of the 5th Admendment to the Constitution. The District Court Judge did have Jurisdiction

over Constitutional Challenges, but not over Administrative Law. 3 weeks prior to trial, I asked the District Court to transfer the case to the Court of Appeals, but apparently the Judge was lacking knowledge of this Federal procedure, as well as wherein his Jurisdiction lies.

Mildred H. Shields, Official Court Reporter issued 13 pages of proceedings that never happened. It was contrived from a study of my filings after the trial and the dialogue is full of ridiculous statements between the Judge and the Justice Dept. lawyer, Clifford Carson Marshall such as "I doubt that this"---" I don't think you do"--"so I guess"--" I believe it has expired"--"I really did not look at that"--"but I just don't think I have""I guess maybe somebody's told him that"--"I don't think I can do it" and quoting the Judge as saying 14 times, "this court does not have jurisdiction of your case"The crowning insult appears on page 9 of the Shields proceedings---"THE COURT: Oh, yes.

.Opinions Below, Continued

Ask all the questions you want to." More from the Judge..."The Court went to great lengths and expended a good deal of time explaining to Plaintiff the reason's for the Court's actions." It never happened.

The law provides leniency for Judicial errors to an unusual degree. The Judge was in no real trouble in failing to recognise his area of Jurisdiction and the Federal Law authorising the transfer of cases mistakenly filed in the wrong Court. Why did the Judge and the Court Reporter elect to "cook" up proceedings when the case had been dismissed within a couple of minutes of my standing before him? This incongruity stands out at once.

JURISDICTION

Invoking Federal Subject Matter Jurisdiction under Title VI, Section 601 of the Civil Rights Act of 1964 (42 U.S.C. -2000d provides that "No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." (Underlining emphasis added.) Since the Railroad Retirement Trust Fund is for all practical purposes Federal Financial maintained, mainly by financial interchange with the Social Security Trust Fund,(just under 3 Billion Dollars in 1987)by analogy I tried to argue the funding element in the 2 element Section 601, but could never get the discussions beyond the racial element.

The Railroad Retirement Act violates due process and equal protection because

JURISDICTION

Career railroad employees actually receive 20 Times as much Tier II for only 1/6th more service, retire at age 60 without the 20% reduction for age in year of litigation - 1983. Needed 20 years of Social Security bestowed by benevolent Statute to realize a maximum Tier I, while this Petitioner only needed 4 years & 9 Months to realize a reasonable Tier II; Instead I received $30.82 for over 25 years maximum paid into the Railroad Retirement fund. Although the Fifth Admendment contains no equal protection clause, it does forbid discrimination that is 'so unjustifiable as to be violative of due process'. Thus if a Federal Statute is invalid under the Equal Protection Clause, it is perforce invalid under the Due Process Clause. Richardson v. Belcher, 404 U. S. 78,81 (1971)

On Petitioner's appeals, the Fourth Circuit Court of Appeals on Oct. 31, 1988 issued an Unpublished affirmation of Defendant.

JURISDICTION

On March 27, 1987 the three judge adjudicating panel affirmed and adopted the decision of the appeals referee.

On October 19th, 1987 United States District Court ADJUDGED AND DECREED that Defendant's motion to dismiss be and same is hereby allowed.

On October 31, 1988 the United States Court of Appeals AFFIRMED the Defendant's position

On Dec. 8, 1988 the United States Court of Appeals granted Ralph G. Patton, Petitioner's motion for leave to file petition out of time. The Court then ordered this granted, but denied the petition to rehear.

This Petition for a Writ of Certiorari was filed within 90 Days of that date.

The jurisdiction of this Court to review the judgment of the Third Circuit is invoked pursuant to 28 U.S.S. § 1254(1).

STATEMENT OF THE CASE

Petitioner is a 66 year old male who resigned in good standing from the Sou. RWY. Co. in 1967, expecting to retire under the 1937 ACT called "the old formula." By letter dated Nov. 6, 1986 Associate Director Robert S. Kaufman advised me (at my request) that had I retired at age 62 in 1967, my retirement would have been $146.45. Make this through Cost of Living Adjustments including a substantial "compounding" factor, as of the year under litigation, 1983, this award would be $510.81.

In an after the fact shift in statutes the Railroad Retirment Board by use of 5 sets of award reductions, not applied to career retirees, came up with a Tier I of $164.14. In a long drawn out process, involving the labor member and a referee member within the Board discovered an underpayment of $19.50 in Tier I and a total oversight of "Winfall" amounting to $140.12. This was added to my annuity.

STATEMENT OF THE CASE

Senator Broyhill identified Tier II as a "Private" element in the Railroad Awards. Since my award was set at $30.82, I knew it was outrageously low, and began my fight to have it become realistic, in view of over 25 years of maximum paid for bases and tax rates.

I went through Administrative Procedure involving a Referee and a 3 judge adjudicating panel. All upheld the Board, so I wrote for a transcript of any discussions had in my case. I had been tried in absenteeism & had no idea what had been done. The Secry. of the Board at my request said there was no discussion of my case; the judges simply affirmed the Administrative decisons. This appears to me to be the height of arrogance. It also turns the "democratic process" on its head.

I then filed an appeal to the District Court for the Western District of N. C.

STATEMENT OF THE CASE

This was docketted for Oct 5, 1987. I alowed one hour to go 35 miles from Morganton N.C. to Rutherfordton, N.C. for the 9:30AM time set by the Court. A rear tire on my car was half flat, so I drove 2 miles to a local business, received prompt assistance in replacing the tire, and arrived in the Federal Courtroom at 9:40AM or certainly no later than 9:45AM. The Court was at "ease" having dispensed with 4 Jury Cases and 2 Non Jury cases, 10 or 15 minutes after Court was to have started.

Judge Jones told me my case had already been dismissed, but had Justice Dept Lawyer Clifford C, Marshall recalled from the lobby just outside of the Court Room. Mr. Marshall walked behind the bench to the right of the Judge. He read the racial element in Title VI Section 601 and the Judge re-affirmed my dismissal in no uncertain terms. I said, "your honor, could I.." The judge interupt-

ed me and very sternly told me, "I told you your case has been dismissed and belongs in the Richmond, Va. Court of Appeals". I have been on the bench for 20 years and have never tried a Railroad Case. In less than 2 or 3 minutes before the Judge, I had to walk out without having been allowed one single word of discussion or pleadings. Again I wonder what happened to the "Democratic Process" and provisions in our Constitution which the Judge was sworn to uphold.

I timely appealed the case and 15 days later Judge Jones filed a Memorandum of decision 5 pages long non factual and after an exchange of letters and $39.00, the Court reporter, Mildred Shields issued 13 pages of Court Dialogue in an obvious effort to put a good "face" on the trial and make the Judge look very considerate, thorough and most benevelont. It trivilizes my case, makes it look like I really "had my day in Court", when in fact I had been totally "Kangarooed."

The case was then timely appealed to the Richmond, Va 4th Circuit Court of Appeals. Again personal appearance was denied and trial proceeded in "Absenteeism."

In the first several paragraphs of the Curiam issued by the Richmond Court of Appeals, the Court recognised both my Constitutional and statutory challenges, but in the third paragraph, they only discussed the District Court's oversight as to their jurisdiction over statutory challenges & the lawful provisions under which this could have been transferred. No comment was made as to whether or not the district court could have tried the 5th Admendment "equal protection component," that I challenged.

While expressing the opinion that the case should have been transferred, they denied my request for refund of the $120.00 Jury and filing fees, thus sanctioning the low standard of performance in the lower

Court.

The Appeals Court then determined I had 3 main claims, but there were many more claims or questions not dealt with and they appear in the " Questions Asked" area of this petition. They accepted the Fritz v the Railroad Board case of 1980, but did not place any differences as to Tier I & II versus the only element in the Fritz case, namely "Windfall."

In their 8th paragraph of the Curiam, they stated ".....the primary purpose of the act was to benefit persons who pursue careers in the railroad industry." This immediatley makes the Act "suspect" and bound to be disciminatory. That Court statement backs up my opinion that we "Dual Workers" are in the Act to be exploited for the transfer of our benefits to the career people. THE APPEALS COURT calls the money differences as "somewhat" greater thus compromising my "impermissable greater."

STATEMENT OF THE CASE.

Apparently I have not made my claim under Title VI, section 601 clear to the Courts. I think it is well known and established that the railroad trust fund is indeed money not accumulated from the efforts of the carriers or the rail workers. The "Federally Financially Assisted" huge factor in the fund is what I have been trying to get the courts to rule on. In the 9th paragraph, the Appeals Court argues or rules that race or national origin is an essential element in Title VI, while I am only concerned about the origin of the funds, now favoring the career worker $600.00 against my $30.82 for only 1/6th more service and I wish to add, I had over twice as much time paid into Social Security in the year of litigation. Is this Federal (Rail) Agency unique in that it can dispense these funds without concern for "equal treatment"?

Finally in the last 4 paragraphs

of the Appeals Court Curiam, the Indexing factor of Tier I is discussed..(This is conversion to current dollars.) It is illogical that Tier I based on Social Security tax rates or only 1/3 of my 25 years paid rates & bases winds up several hundred percent greater than Tier II which has a 66% greater cost - pay in - factor. It is also illogical or a mathematical nightmare that Tier I is current dollars and Tier II is 1960 dollars, savagely reduced by current dollars so that it is cut 67% or for all practical purposes eliminated.

In all these pleadings, I think if the Supreme Court will answer this one question, this case can be fairly resolved. Is $30.82 a reasonable annuity for over 25 years maximum bases and rates paid in and what should be done to make this reasonable? (Providing the Court sees this as unreasonable)

REASONS FOR GRANTING PATTON'S WRIT

In the first appeals, the referee and the 3 judge adjudicating panel held offices in the United States Railroad Retirement Board and shared the same address. This condition violates all major rules in the Jury, Judge selection process, such as the need for a neutral uninvolved non knowledge Non interested party or parties. The District Court did not let me make a single pleading; yet issued a "white wash" Memorandum of Decision highly detrimental to my case and the Court reporter joined in with numerous false statements.

The Appeals Court dealt in generalaties with very light, non conclusive probings, because I wasn't there to defend myself.

The questions asked and the statement of my case clearly show an extreme degree of loss of earned entitlements. There are no logical, fair or true Justice reasons to uphold the treatment applied to me by unfair statutes. I have paid for all I have asked for..no grants.

REASONS FOR GRANTING PATTON'S WRIT CONT'D.

I. WHETHER THE FEDERAL JUDICIAL SYSTEM AND COURTS MAY TRY AN INDIVIDUAL IN ABSENTEEISM WITHOUT OFFENDING THE CONSTITUTION, OR THE DUE PROCESS OF LAW OR THE DEMOCRATIC PROCESS? THE ABSENTEEISM WAS NOT MY CHOICE AND WAS ORDERED OVER MY WRITTEN REQUEST TO APPEAR.

II. WHETHER THE FEDERAL APPEALS COURT FOR THE FOURTH CIRCUIT COULD TAKE THE SUPREME COURT DECISIONS IN THE RAILROAD RETIREMENT ACT OF 1974, 45 U.S.C. § 231 et seq INVOLVING FRITZ v.THE BOARD CONCERNING WINDFALL ELIMINATION FOR DUAL WORKERS WITH LESS THAN 25 YEARS RAILROAD SERVICE AND THEN APPLY THESE SAME DECISIONS TO A NEAR ELIMINATION OF TIERS I AND II NOT PROVIDED FOR IN THE 1974 SOLVENCY ACT? THE "WINDFALL" COMPONENT IN THE AWARDS SYSTEM IS ALMOST INCIDENTAL TO THE TOTAL ANNUITIES WHILE THE TWO TIERS ARE BY FAR THE MAIN COMPONENTS DIRECTLY ACCRUING FROM EARNED ENTITLEMENTS PAID INTO A GOVERNMENT TRUST FUND IN "TRUST" WITH THE GOVERNMENT. THE ACTUAL MONETARY MONTHLY LOSS, NEVER ACKNOWLEDGED BY THE APPEALS COURT TO PETITIONER PATTON IS ABOUT $600.00, WHILE THE FRITZ LOSS WAS FOUND TO BE A MEDIAN $88.00. THE SOCIAL SECURITY RATES AND BASES ARE ONLY 1/3 OF THAT PAID FOR IN MY OVER 25 YEARS HISTORY AND A TIER II AT LEAST EQUAL TO TIER I IS THE ONLY COMPONENT THAT DISTINGUISHES RAILROAD AWARDS FROM SOCIAL SECURITY. MY PRESENT OVERALL AWARD IS ONLY A SLIGHTLY ELEVATED SOCIAL SECURITY AWARD.

III. RAILROAD RETIREMENT COST VERY NEAR 3 TIMES SOCIAL SECURITY (270% ON RATE-30% ON BASES) TRUE IN MY OVER 25 YEARS AND HOLDS TODAY. TIER II OF SEVERAL HUNDRED DOLLARS IS JUSTIFIED BY THE COST.

CONCLUSION

The Petition for a Writ of Certiorari Should be granted and, upon review, the Judgement of the Court Of Appeals for the 4th Circuit should be reversed.

The Supreme Court does not have to "Legislate" in this case. The Court could in the interest of justice certify this Petitioner for those statutes[1] already written into the (45 U.S.C § 231 et seq) with two encumberances that would eliminate any impact on the Retirement Board, stated as follows: (to back retirement to 1983)

When a Dual Worker has over 25 years of serviceand Tier II falls below $31.00, the Dual Worker will be awarded 30/60 and use the sixty highest earnings month in his entire work history for Tier II just as the career worker uses his highest. 29 years for Tier I, even though such years were rail employment,

[1] Career Statutes

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APPENDIX

UNITED STATES OF AMERICA
Railroad Retirement Board,
844 Rush Street
Chicago, Illinois, 60611

March 24, 1987

Appeal of	)	
Ralph G. Patton, R.R.B. No. A238-24-9458	)	Railroad Retirement Act Claims Appeal Docket No. 3380

The Board has reviewed the record in the appeal of Ralph G. Patton from the decision of the appeals referee and has considered the argument and evidence contained therein. The Board affirms and adopts the decision of the appeals referee.

The appeal is denied.

R. A. Gielow, Chairman

C. J. Chamberlain, Labor

J. D. Crawford, Managemen

(Signatures of the 3 Bd. adjudicating panel.)

Note: Letter dated Oct. 28, 1987 in part:
....."In your case there was no discussion of that decision by the members.."

Beatrice Ezerski, Secy to Bd.

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF NORTH CAROLINA

SHELBY DIVISION

SH-C-87-178

RALPH G. PATTON, PLAINTIFF	)	
v.	)	J U D G E M E N T
UNITED STATES RAILROAD RETIREMENT BOARD	)	
DEFENDANT.	)	

THIS MATTER was heard before the Court in Rutherfordton, N. C. On Oct. 5, 1987 upon Defendant's motion to dismiss and the issues having been determined as shown by a Memorandum of Decision entered simultaneously herewith:

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Defendant's motion to dismiss be and the same is hereby allowed.

The Defendant shall recover its cost

This the 19th day of October, 1987

Woodrow W. Jones (signature)
United States District Judge.

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF NORTH CAROLINA

SHELBY DIVISION

SH-C-87-178

RALPH G. PATTON, PLAINTIFF,	)
v.	MEMORANDUM OF DECISION
UNITED STATES RAILROAD RETIREMENT BOARD, DEFENDANT	)

Plaintiff acting pro se brought this action alleging that his reduced age annuity under the Railroad Retirement Act has been incorrectly computed and in so doing the Railroad Retirement Board has discriminated against him in violation of Title VI, Section 601 of the Civil Right's Act of 1964. The matter is presently before the Court upon Defendant's motion to dismiss pursuant to Rule 12(b)(1), (5) and (6) of the Federal Rules of Civil Procedure. After careful consideration of the pleadings and arguments, the Court now enters its findings and conclusions.

The motion was called to be heard

on October 5, 1987 in Rutherfordton, North Carolina. The Defendant, represented by Assistant United States Attorney Clifford Marshall, was present at the time the case was called. After waiting a reasonable amount of time for Plaintiff to appear, the Court proceeded to hear from Defendant's motion its motion to dismiss. It appearing to the Court that Defendant's motion to dismiss should be allowed as a matter of law, as the subsequent memorandum reveals, the Court announced its decision from the bench. The attorney for the Defendant then left the courthouse. After a period of time had elasped, the Plaintiff appeared offering as an excuse for being late the fact that he had had a flat tire en route to Court and that he could not find a parking place. The Court then heard the Plaintiff on Defendant's motion to dismiss and there being nothing said to persuade the Court otherwise, the Defendant's motion to dismiss was reaffirmed

in Court in Plaintiff's presence. The Court went to great lengths and expended a good deal of time explaining to Plaintiff the reasons for the Court's action. The Plaintiff was told that the next step after his administrative processes was to appeal to the Fourth Circuit , the D. C. Circuit, or the Seventh Circuit Courts of Appeals and that a United States District Court did not have jurisdiction over his case. Plaintiff was further advised that if it had the authority the Court would transfer this action to the Fourth Circuit Court of Appeals but, as it lacks jurisdiction, it has no authority to proceed any further with the case.

The Plaintiff contends that this Court has jurisdiction of this matter under Title VI section 601 of the Civil Rights Act of 1974, (42 U. S. C. A § 2000d) due to alleged discrimination under a program or activity receiving Federal Financial Assistance. Title 42 U.S.C.A. Section 2000d reads as follows:

"No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance."

One element of this statute is that the entity involved in the action is engaging in racial or national origin discrimination. Plaintiff has made no allegation of racial or national discrimination in this matter. His contention is that his annuity has been incorrectly computed. Therefore, this Court concludes that Plaintiff has failed to state a claim against Defendant upon which relief can be granted under 42 U.S.C.A. S 2000d.

As to Plaintiff's complaint that his annuity award is incorrect, it appears that this Court lacks jurisdiction in this matter. Once a claimant has exhausted his or her administrative remedies, the decision of the Railroad Retirement Board is subject to review by a United States Court of Appeals pursuant to Section 8 of the Railroad Retirement Act (45 U.S.C.A. S 231g),

which incorporates by reference the provisions pertaining to judicial review set forth in Section 5(f) of the Railroad Unemployment Insurance Act (45 U.S.C.A. § 355 (f). Title 45 U.S.C.A.§ 355(f) provides in pertinent part as follows:

> Any claimant . . . aggrieved by a final decision . . .. may, only after all administrative remedies within the Board will have been availed of and exhausted, obtain a review of any final decision of the Board by filing a petition for review within ninety days after the mailing of notice of such decision to the claimant. . .or within such further time as the Board may allow, in the United States Court of Appeals for the circuit in which the claimant . . .resides. . .or in the United States Court of Appeals for the Seventh Circuit or in the United States Court of Appeals for the District of Columbia....Upon the filing of such petition the Court shall have exclusive jurisdiction of the proceeding. . . .

As this Court is one of limited jurisdiction the Court concludes that Title 45 U.S.C.A. § 355(f) precludes a United States District Court from exercising jurisdiction over cases such as the one at bar and, therefore, Defendant's motion

to dismiss on the grounds that this Court does not have subject matter jurisdiction will be allowed.

It appears that Defendant's motions to dismiss for lack of jurisdiction over the subject matter and failure to state a claim upon which relief can be granted should be allowed as a matter of law. It will be unnecessary for the Court to rule on Defendant's motion to dismiss for insufficiency of service of process. A judgement allowing Defendant's motion to dismiss as to the forementioned issues shall be entered simultaneously herewith.

This the 19th day of October, 1987.

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
NO. 87-3166

(F I L E D)
DEC 8, 1988
U.S. Court of Appeals
Fourth Circuit)

Ralph G. Patton

Plaintiff-Appellant

versus

United States Railroad Retirement Board

Defendant - Appellee

On Petition for Rehearing.

O R D E R

Upon consideration of the appellant's petition for rehearing, and motion for leave to file petition out of time;

IT IS ORDERED that the motion to file petition for rehearing out of time is granted and the petition for rehearing is denied.

Entered at the direction of Judge Butzner for a panel consisting of Judge Hall, Judge Russell, and Judge Butzner.

For the Court,
JOHN M. GREACEN, Clerk

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

NO. 87-3166

RALPH G. PATTON

PLAINTIFF-APPELLANT

v.

UNITED STATES RAILROAD
RETIREMENT BOARD

DEFENDANT - APPELLEE

Appeal from the United States District Court for the Western District of North Carolina, at Asheville. Woodrow Wilson Jones, District Judge. (C/A No. 87-178)

Submitted: September 28, 1988 Decided October 31, 1988 before RUSSELL and HALL, CIRCUIT JUDGES, and BUTZNER, Senior Circuit Judge.

Ralph G. Patton, Appellant Pro Se. Clifford C. Marshall, Jr. (OFFICE OF THE UNITED STATES ATTORNEY), Lori A. Watkins (UNITED STATES RAILROAD RETIREMENT BOARD) for Appellee.

PER CURIAM:

Ralph G. Patton seeks review of the Railroad Retirement Board's calculation of his annuity under the RailroadRetirement Act of 1974 (Act), 45 U.S.C. - 231 et seq. Patton also raises Constitutional and Statutory challenges to the validity of the Act itself. For the reasons discussed below, we affirm the decision of the Board.

Patton originally brought this case in the Federal District Court in Asheville, N. C. The District Courtdismissed the case on the grounds that it had no jurisdiction to review decisions of the Railroad Retirement Board. See 45 U.S.C - 3551(f). Patton then noted this appeal.

We are of the opinion that, rather than dismissing the case for lack of jurisdiction, the District Court should have Transferred the case to this Court pursuant to 28 U.S.C. - 1631. Section 1631 provides that if a petition for administrative review is filed

in a court which lacks jurisdiction, that Court must transfer the petition to a court where jurisdiction is proper if justice requires. If a case which should have been transferred by the District Court reaches the Circuit Court on appeal, the Circuit Court may deem the case transferred pursuant to 1631. In re: McCauley, 814 F.2d 1350 (9th Cir. 1987). Accordingly, we assert Jurisdiction and consider Patton's petition on its merits.

It appears from a careful review of his numerous pleadings that Patton seeks to advance three main claims.

(1) the Railroad Retirement Act violates due process and equal protection because career railroad employees allegedly receive higher annuities than those who had both railroad and non-railroad employment during their careers;

(2) the Act violates Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d et seq., because it impermissibly discriminates against non-career railroad employees;

(3) and even if the Act is valid, his annuity was calculated incorrectly under its terms.

Each of these claims is discussed in turn below:

The Act of 1974 created a two-tier retirement system. The first tier (Tier I) consists of an employee's railroad and non-railroad employment. Tier I is calculated using the same formula used to calculate Social Security Benefits. The second tier (Tier II) provides an additional amount based solely on an employee's Railroad Service. Finally, certain employees including Patton, qualify under -231b(h) for an additional benefit called a "vested dual benefit."

Patton contends that the Act is unconstitutional because the Tier II component of his annuity is much lower than that received by a career railroader. The Supreme Court addressed the constitutionality of the Act in United States Railroad Retirement Board v. Fritz, 449 U.S. 166 (1980). The issue in that case was whether - 231b(h) of the act, which created the four classes of annuitants used to deter-

mine eligibility for the "dual vested benefit" windfall, was unconstitutional. The Court upheld these classifications, holding that even though they may be unartfully drawn and may result in some inequality, they were not created in a patently arbitrary or irrational way; to the contrary, they bore a rational relation to Congress's purpose in passing the Act, which was to ensure the solvency of the Railroad Retirement System by phasing out windfall benefits.[1] Fritz, 449 U.S. at 177-78.

This same analysis may be applied to Patton's argument regarding Tier II benefits. Even if the Tier II formula does favor railroaders over non-career railroaders, this does not necessarily make the Act unconstitutional since a number of plausible reasons for this arrangement can be imagined. For instance, as the Court noted in Fritz, the primary purpose of the Act was to benefit persons who pursue careers in the Railroad Industry; thus, it is

not irrational that their interests were protected to a somewhat greater degree than those of non-career railroaders when financial exigencies demanded that the system be restructured. Fritz, 449 U.S. at 178; see also Hisquierdo v. Hisquierdo, 439 U.S. 572, 573 (1979). While it is unfortunate that Patton falls just a few years short of the thirty years of service needed to qualify as a career railroader, the "task of classifying persons for...benefits...inevitably requires that some persons who have an almost equally strong claim to favored treatment be placed on different sides of the line." Mathews v Diaz, 426 U.S.67, 83-84 (1976). Thus while the system instituted by the Act may indeed result in some inequality for those like Patton, we perceive no basis for finding the Act unconstitutional.

Patton's next claim is that the Act

[1] Though Patton argues that this purpose no longer obtains because the system is now financially sound, the decision whether the Act has outlived its usefulness is solely one for legislature, not the courts.

violates Title VI, 42 U.S.C. - 2000d, because it discriminates against non-career railroaders. Patton seems to believe that there are two parts to Title VI: one which prohibits discrimination on the basis of race and one that prohibits discrimination of any sort in connection with Federally funded programs. This belief, however, reflects a misunderstanding of Title VI. Discrimination on the basis of race or national origin is an essential element of every Title VI claim. See, e.g., Dowdell v. City of Apopka, 511 F. Supp. 1375, 1384 (M.D. Fla. 1981), aff'd, 698 F 2d 1181 (11th Cir.1983) Jackson v. Conway, 476F.Supp. 896 (E.D. Mo. 1979), aff'd. 620 (8th Cir. 1980). Since Patton specifically disavows anyclaim of racial discrimination, he has failed to state a claim under Title VI.

Patton's final claim is that, even if the Act is valid, the Tier II Component

of his annuity was miscalculated under its terms. Under - 231b(b) of the Act, an em-employee's Tier II is determined by multiplying the average monthly compensation (AMC) of his highest sixty earnings months in the railroad industry by his years of service and then multiplying the product by seven-tenths of one percent.

Patton first contends that in determining his AMC, his highest sixty earnings months, which occurred from 1961-1967, should have been indexed to reflect their value in current dollars. This argument is not supported by the language of - 231b(b). While an employee's yearly earnings are indexed in order to calculate the Tier I component of the annuity, there is no provision in 231b(b) which requires, or even allows, an employee's sixty highest months of compensation to be indexed for the purpose of calculating Tier II. Indexing is simply not a part of the Tier II formula.

Patton next contends that in calculating his Tier II component the Board should not limit itself to Patton's sixty highest earnings months in the Railroad Industry but rather should use the sixty highest earnings months in his entire work history. This contention is also without merit. While - 231b(b) is perhaps not as explicit as it might be in this regard, when read in context and in conjunction the rest of the[2] it is clear that Tier II is to be calculated using an employee's sixty highest earnings month's in the railroad industry only.

In sum, we conclude that the Board correctly applied the provisions of -231b in calculating PATTON'S railroad annuity. Furthermore, as discussed above, we are not persuaded by Patton's challenges to the Act's validity. Accordingly, we affirm the decision of the Board regarding Patton's annuity. We also deny Patton's request that

we order the District Court to refund his District Court filing fee. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the Court and argument would not aid the decisional process.

AFFIRMED

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[2] See especially the definitions of employee employer, years of service, etc. in - 231 & - 231b(b)'s reference to the railroad compensation reports required by - 231h.

CERTIFICATE OF SERVICE

I hereby certify that I have today by the medium of Priority Return Signature U.S. Mail served 3 copies each to concerned parties in the Patton v. The U. S. Railroad Retirement Board. The contents are basically the same and this is done at the direction of the Clerk of the Supreme Court to better conform with their procedural rules adopted June 30, 1980.

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